

Article 7.5
Supplemental Job Displacement Benefit

§10133.50 Definitions

(a) The following definitions apply for injuries occurring on or after January 1, 2004:

(1) Alternative Work. A job or occupation, other than modified work, with the same employer which is compatible with the injured employee's work restrictions. Alternative work for injuries occurring on or after 1/1/04 shall also meet the criteria of Labor Code Section 4658.6.

(2) Approved Training Facility. A training or skills enhancement facility or institution that meets the requirements of Section §10133.57.

(3) Claims Administrator. The person or entity responsible for the payment of compensation for a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(4) Employer. The person or entity that employed the injured employee at the time of injury.

(5) Employer Offer. An offer of medically appropriate employment to the injured employee by the date of injury employer in a form and manner prescribed by the administrative director.

(6) Essential Functions. Job duties considered crucial to the employment position held or desired by the employee. Functions may be considered essential because the position exists to perform the function, the function requires specialized expertise, serious results may occur if the function is not performed, other employees are not available to perform the function or the function occurs at peak periods and the employer cannot reorganize the work flow.

(7) Insurer. Has the same meaning as in Labor Code Section 3211.

(8) Modified Work. An injured employee's usual and customary job or occupation with the same employer after modification to accommodate required work restrictions. Modification includes, but is not limited to, changing or excluding certain tasks, reducing the time devoted to certain tasks, modifying the work station, changing the work location, and providing helpful equipment or tools. Modified work for injuries occurring on or after 1/1/04, shall meet the criteria of Labor Code Section 4658.6.

(9) Nontransferable Training Voucher. A document provided to an employee that allows the employee to enroll in education-related training or skills enhancement. The document shall include identifying information for the employee and claims administrator, specific information regarding the value of the voucher pursuant to Labor Code § 4658.5.

(10) Notice. A required letter or form generated by the claims administrator and/or the employer and directed to the injured employee.

(11) Parties. The employee, claims administrator and their designated representatives, if any.

(12) Permanent Partial Disability Award. The document by which permanent partial disability is determined by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board.

(13) Regular Position. A position arising from the ongoing business needs of the employer which consists of defined activities that can be reasonably viewed as required or prudent in view of the company's business objectives and is expected to last at least 12 months.

(14) Supplemental Job Displacement Benefit. An educational retraining or skills enhancement allowance for injured employees whose employers are unable to provide work consistent with the requirements of Labor Code § 4658.6.

(15) Vocational & Return to Work Counselor (VRTWC). A person or entity capable of assisting a person with a disability with development of a return to work strategy and whose regular duties involve the evaluation, counseling and placement of disabled persons. A VRTWC must have at least an undergraduate degree in any field and three or more years full time experience in conducting vocational evaluations, counseling and placement of disabled adults.

(16) Work Restrictions. Permanent medical limitations on employment activity established by the treating physician, Qualified Medical Examiner or Agreed Medical Examiner.

Authority: Sections 133, 4658.5, 5307.3, Labor Code.

Reference: Sections 124, 4658.5, and 4658.6 Labor Code.

§10133.51 Notice of Potential Right to Supplemental Job Displacement Benefits.

- (a) This section shall only apply to injuries occurring on or after 1/1/04.
- (b) Within 10 days of the last payment of temporary disability, the employer shall provide notice of the employee's potential right to the supplemental job displacement benefit to the employee. The employer shall use the mandatory form "Notice of Potential Right to Supplemental Job Displacement Benefit" that is set for in Section 10133.52. The notice shall be sent to the employee by certified mail.

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.52 “Notice of Potential Right to Supplemental Job Displacement Benefit Form”

If your injury causes permanent partial disability and you do not return to work within 60 days of the last payment of temporary disability, you may be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools.

The amount of the voucher for the supplemental job displacement benefit will be as follows:

Up to four thousand dollars (\$4,000) for a permanent partial disability award of less than 15%.

Up to six thousand dollars (\$6,000) for a permanent partial disability award between 15 and 25 %.

Up to eight thousand dollars (\$8,000) for a permanent partial disability award between 26 and 49 %.

Up to ten thousand dollars (\$10,000) for a permanent partial disability award between 50 and 99 %.

A permanent partial disability award is determined by a Workers’ Compensation Administrative Law Judge or the Workers’ Compensation Appeals Board.

The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. Not more than 10 percent of the voucher moneys may be used for vocational or return to work counseling.

If you are eligible, you will receive the voucher from the claims administrator within 30 days from the date that the claims administrator has commenced permanent disability payments. If the permanent disability award is greater than the permanent disability percentage estimated by the claims administrator, a voucher for any additional amount due shall be issued by the claims administrator within 30 days of the issuance of the permanent disability award.

Note: The employee must use the voucher within 5 years of the date of injury or risk losing the right to the benefit.

If modified or alternative work is available, you will receive a Notice of Offer of Modified or Alternative Work (Form DWC – AD 10133.53) from your employer within 30 days of the termination of temporary disability indemnity payments. Your employer will not be required to pay for supplemental job displacement benefits if the employer meets either of the following conditions:

- If the offer is for modified work which accommodates your work restrictions and lasts at least 12 months; or
- If the offer is for alternative work meeting all of the following conditions: (1) You have the ability to perform the essential functions of the job provided; (2) the job provided is in a regular position lasting at least 12 months; (3) the job provided offers wages and compensation that are within 15 percent of those paid to you at the time of the injury; and (4) the job is located within reasonable commuting distance of your residence at the time of injury.

If there is a dispute regarding the Supplemental Job Displacement Benefit, the employee or claims administrator may file a “Request for Dispute Resolution before the Administrative Director” (8 C.C.R. §10133.54).

Date: _____

Name of Claims Administrator: _____

Address of Claims Administrator: _____

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.53 Form DWC-AD 10133.53 “Notice of Modified or Alternative Work for Injuries Occurring on or after 1/1/04”

[See attached.]

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.54 Form DWC-AD 10133.54 “Request for Dispute Resolution before the Administrative Director”

[See attached.]

Authority: Sections 133 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.55 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

- (a) When the employer does not offer modified or alternative work within 30 days of the termination of temporary disability indemnity payments that complies with Labor Code §4658.6, and the injured employee does not return to work for the employer within 60 days of the last payment of temporary disability benefits, the employee shall be eligible for the Supplemental Job Displacement Benefit.
- (b) The employer shall provide a voucher for education-related retraining or skill enhancement or both to the employee within 30 days from the date that the employer has commenced permanent disability payments.
- (c) If the permanent disability award is greater than the permanent disability percent estimated by the employer at the commencement of permanent disability payments, a voucher for education-related retraining or skill enhancement or both for any additional amount due shall be issued by the employer within 30 days of the issuance of the employee's permanent partial disability award.
- (d) The voucher shall be issued to the employee allowing direct reimbursement to the employee upon the employee's presentation to the employer's claims administrator of documentation and receipts or as a direct payment to the provider of the education related training or skill enhancement.
- (e) The voucher must indicate the appropriate level of money available to the employee in compliance with Labor Code §4658.5.
- (f) The mandatory voucher form is set forth in Section 10133.56.
- (g) The voucher shall certify that the school is approved and if outside of California, approval is required similarly to the Bureau for Private Postsecondary (BPPVE).

Authority: Sections 133, 4658.5, 4658.6, and 5307.3, Labor Code.

Reference: Sections 4658.5 and 4658.6, Labor Code.

**§10133.56 Form DWC-AD 10133.56 “Supplemental Job Displacement
Nontransferable Training Voucher Form”**

[See attached.]

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

Supplemental Job Displacement
Nontransferable Training Voucher Form
(8CCR §10133.56 – Mandatory Form)

You have been determined eligible for this nontransferable, Supplemental Job Displacement Voucher. This Supplemental Job Displacement Benefit voucher may be used for the payment of tuition, fees, books, and other expenses required by a state approved or accredited school that you enroll in for the purpose of education related retraining or skill enhancement, or both.

The state approved or accredited school will be reimbursed upon receipt of a documented invoice for tuition, fees, books and other required expenses required by the school for retraining or skill enhancement. If you pay for the eligible expenses, you may be reimbursed for these expenses upon submission of documented receipts. No more than 10 percent of the value of this voucher may be used for vocational or return to work counseling.

Please present this original letter to the state approved or accredited school and/or the Vocational & Return to Work Counselor of your choice, chosen from the list developed by the Division of Workers' Compensation's Administrative Director, in order to initiate your training and return to work counseling. The school and/or counselor should contact me regarding direct payment from your supplemental job displacement benefit.

Injured Employee Information: Upon completing the voucher form the injured employee must return the form with receipts and documentation to the claims administrator immediately for reimbursement. (The claims administrator must complete Nos. 1 – 8 of this voucher form prior to sending it to the injured employee.) This voucher must be submitted within 5 years of your date of injury or you may lose your rights to this benefit.

1. Injured Employee Name_____
2. Address_____
City_____ State_____ Zip Code_____
3. Claim Number_____ Phone Number_____

Claims Administrator

4. Name_____
5. Claims Mailing Address_____

6. City _____ State _____ Zip Code _____
7. Claims Rep _____ Phone Number _____
8. \$ _____ is available to the injured employee based on _____ % of Permanent Partial Disability Award per [] claims administrator's estimate of permanent disability or [] C & R or [] Award.

The injured employee must complete #'s 9 – 18 and sign and date this voucher form.

(VRTWC) Vocational Return to Work Counselor (if any)

9. Name _____ Phone Number _____
10. Address _____
11. City _____ State _____ Zip Code _____
12. Funds used for vocational and return to work counseling \$ _____ (10% maximum of voucher value)

Training Provider Details

13. Provider Name _____
14. Provider Address _____ Phone Number _____
15. City _____ State _____ Zip Code _____
16. Provider approval number _____
17. Expiration Date _____
18. Provider Contact Name _____
19. Training Cost _____
20. **Injured Employee Signature** _____ **Date** _____

Note to Claims Administrator: Upon receipt of voucher, receipts and documentation from the employee, reimbursement payments to the employee or direct payments to VRTWC and training providers must be made within 45 calendar days.

§10133.57 State Approved or Accredited Schools

Private providers of education-related retraining or skill enhancement selected to provide training as part of a supplemental job displacement benefit shall have either approval from the Bureau for Private Postsecondary and Vocational Education, approval from a California state agency that has an agreement with the Bureau for the regulation and oversight of non-degree-granting private postsecondary institutions, accreditation from one of the Regional Associations of Schools and Colleges authorized by the United States Department of Education, or certification from the Federal Aviation Administration. Out of state training is not prohibited so any training outside of California must include an approval agency in that state similar to the Bureau for Private Postsecondary and Vocational Education (BPPVE).

Authority: Sections 133, 4658.5, and 5307.3, Labor Code.

Reference: Section 4658.5, Labor Code.

§10133.58 The Administrative Director's List of Vocational Return To Work Counselors

For injuries occurring on or after 1/1/04.

- (a) The Administrative Director shall maintain a list of Vocational & Return to Work Counselors (VRTWC) who perform the work of assisting injured employees. A VRTWC who meets the qualifications specified in Section 10133.5(a)(15) must apply to the Administrative Director to be included on the list throughout the year. The list shall be reviewed and revised on a yearly basis, and shall be made available upon request.
- (b) The injured employee may select a Vocational & Return To Work Counselor whenever the assistance of a Vocational & Return To Work Counselor is needed.
- (c) The injured employee shall be responsible for providing the VRTWC with any necessary medical reports. If, for any reason, it is necessary for the employee to request permanent and stationary medical reports, the request shall be made in writing to the claims administrator with a signed release waiver.
- (d) The VRTWC shall communicate with the injured worker regarding the evaluation.

NOTE: Authority cited: Sections 133, 4658.5, and 5307.3, Labor Code. Reference: Sections 4658.5.

§10133.59 Termination of Employer's Liability for the Supplemental Job Displacement Benefit

(a) For injuries occurring on or after January 1, 2004, the employer's liability to provide a supplemental job displacement voucher shall end if any of the below circumstances occur:

(1) the employer offers modified or alternative work meeting the requirements of Labor Code §4658.6;

(2) the employer offers the employee modified or alternative work in compliance with Labor Code §4658.6 and the employee voluntarily quits prior to working in the modified or alternative work position for 12 months;

(3) the employer offers modified or alternative work to the employee on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6 and subsequently learns that the employee cannot lawfully perform alternative work due to the employee's immigration status, the employer is not required to provide supplemental job displacement benefit.

(4) the employer's obligation to provide alternative work to a seasonal employee is terminated after 12 months if the following conditions apply:

(A) the employee was hired on a seasonal basis prior to injury;

(B) the offer of modified or alternative work is on a similar seasonal basis to the employee's previous employment; and

(C) the offer is made on the DWC-AD Form 10133.53 that meets the conditions of Labor Code Section 4658.6.

(5) the eligible employee fails to enroll for retraining pursuant to Labor Code §4658.5 within the time allowed by Labor Code §5410; or

(6) the maximum funds allowed by the voucher have been exhausted.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4658.5, 4658.6, and 5410 Labor Code.